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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/425,636	10/22/1999	DOUGLAS QUONG	55197USA4A	9824

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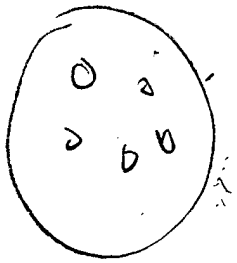
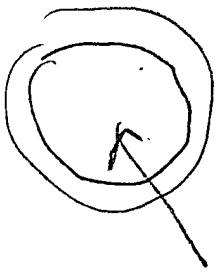
EXAMINER	
NGUYEN, HELEN	
ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 12/06/2001

Please find below and/or attached an Office communication concerning this application or proceeding.





Office Action Summary	Application No. 09/425,636	Applicant(s) QUONG, DOUGLAS	
	Examiner Helen Nguyen	Art Unit 1617	

-- The MAILING DATE of this communicati n appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 October 2001* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10 and 12-32* is/are pending in the application.

4a) Of the above claim(s) *9 and 19-32* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,10 and 12-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

The amendment of paper no. 8, and a Terminal Disclaimer, filed October 5, 2001, are acknowledged.

The Examiner has carefully reviewed the amendment of paper no. 8. The rejections of claims 1-8 and 10-18 of record under 35 U.S.C. 112, first and second paragraph, under 35 U.S.C. 103 (a) as being unpatentable over Connick Jr. (US Patent No. 4,400,391) in view of Nesbitt et al. (US Patent No. 4,487,759), and the provisional Double Patenting rejection over copending Application No. 09/425,761, are hereby withdrawn.

However, the obviousness Provisional Double Patenting rejection over copending Application No. 09/426,140 is maintained because Applicant's Terminal Disclaimer processing remains pending.

A new ground of rejection is applied in view of amendment in paper no. 8.

Claims 1 and 4 are amended.

Claim 11 is canceled.

Claims 1-8 and 10-18 are pending and presenting for examination.

Title objection

moot by Adm't B1 paper #10 2/12/02

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should refer to a method of using rather than a composition.

Claim rejection

❖ The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8 and 10, 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akashi et al. (US Patent No. 5,686,385).

Akashi et al. teach a microcapsule for easily handling and improving physical properties. The microcapsule comprises an agricultural active ingredient, including a pheromone (title, abstract, column 3, lines 35-36, column 5, line 47, and column 8, lines 12-17). The active is encapsulated with alginates by spray drying (column 8, lines 55-56, column 3, lines 64-66, column 6, line 45).

Akashi et al. further teach that auxiliary ingredients can be added to the microcapsule. Such auxiliary ingredients include a wetting agent, a surfactant, talc, and a UV absorbent (column 9, lines 55, 62, column 10, lines 1-2, and column 11, line 1).

Akashi et al. further teach delivery via dispersion of the microparticles in water (column 9, line 27).

However, Akashi et al does not teach desiccated microcapsules exposing to humidity and rehydrating and/or dehydrating.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to deliver a dispersion of alginate microcapsules containing pheromones to achieve the beneficial effect of handling and improving physical properties in view of Akashi et al.

As to the claimed exposure to humidity and rehydrating, it is well-known to one having ordinary skill in the art that spraying the composition into the environment, which has natural changes in humidity, would cause the composition to naturally dehydrate and rehydrate as the levels of humidity in the environment change. Further, Applicant has not shown that the means by which the humidity is formed is critical, and therefore the

natural environmental moisture produced through humid air and rain reads on Applicant's claims.

As to the claimed weight percent, it is within the skill in the art to select optimal parameters such as ratios or weight percents of components in order to achieve a beneficial effect. See In re Boesch, 205 USPQ 215 (CCPA 19880). Therefore, the ratios or weight percents instantly claimed are not considered critical absent evidence showing unexpected and superior results.

w/D. Lead TA

❖ The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-8 and 10-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being

unpatentable over claims 1-50 of copending Application No. 09/426,140. Although the conflicting claims are not identical, they are not patentably distinct from each other because those of '140 encompass the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-8 and 10, 12-18 are rejected.

moot Appl. canceled cl. 19-32 except cl. 9

This application contains claims 9, and 19-32 are drawn to an invention nonelected with traverse in Paper No. 5. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the

THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Nguyen whose telephone number is (703) 605-1198. The examiner can normally be reached on M-F (9:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, Edward J. Webman can be reached at (703) 308-4432 or her supervisor, Minna Moezie can be reached at (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Helen Nguyen
Patent Examiner

December 4, 2001

EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500